
Judiciary Committee

HB 1707

Title: An act relating to death penalty eligibility for persons who are mentally retarded or have a severe mental disorder.

Brief Description: Concerning death penalty eligibility for persons who are mentally retarded or have a severe mental disorder.

Sponsors: Representatives Williams, Pedersen, O'Brien, Moeller, Flannigan, Darneille, Hudgins, Chase, Hunt, Santos, Wood and Lantz.

Brief Summary of Bill

- Prohibits a death sentence for a person who had a severe mental disorder at the time the crime was committed.
- Establishes procedures for raising and determining whether a defendant is ineligible for a death sentence based on a severe mental disorder or mental retardation.
- Allows the jury in a special sentencing proceeding to consider as mitigating factors whether the defendant had a mental disease or defect, or significant intellectual impairments that do not rise to the level of mental retardation.

Hearing Date: 2/14/07

Staff: Edie Adams (786-7180).

Background:

Under Washington's death penalty statute, a death sentence may be imposed only against those persons convicted of aggravated first-degree murder and only after a special sentencing proceeding has been held to determine whether the death penalty is warranted.

Aggravated First-Degree Murder: Aggravated first degree murder means premeditated first-degree murder when any of a specified list of 14 aggravating circumstances exists. Examples of aggravating circumstances include, among others:

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- The victim was a police officer performing official duties; or a judge, juror, witness, or attorney and the murder was related to the victim's official duties.
- The murder was committed in the course of, in furtherance of, or in immediate flight from certain crimes, such as first- or second-degree robbery, rape, or burglary.
- The murder was committed in exchange for money or to conceal the commission of a crime.
- There was more than one victim and the murders were part of a common scheme or plan, or the result of a single act.

Special Sentencing Proceeding: A person convicted of aggravated first-degree murder is subject to the death penalty only through a special sentencing proceeding, which is held only if the prosecutor files a timely notice on the defendant. During the special sentencing proceeding, the jury must determine unanimously that "there are not sufficient mitigating circumstances to merit leniency" in order for the death penalty to be imposed. The jury may consider any mitigating factor in its deliberation. Examples of mitigating factors are set forth in statute and include: prior criminal activity; extreme mental disturbance or duress at the time of the murder; whether the defendant was substantially impaired as the result of a mental disease or defect; whether the defendant acted under duress or domination of another; youth of the defendant; and likelihood of future dangerousness.

If the jury finds that there are sufficient mitigating circumstances to merit leniency, the defendant receives a sentence of life imprisonment without the possibility of release.

Mental Retardation and Mental Illness: Washington's capital punishment statute prohibits the imposition of the death penalty for a person who is found to be mentally retarded at the time the crime was committed. Mental retardation is defined as significantly sub-average general intellectual functioning (IQ of 70 or below) that exists concurrently with deficits in adaptive behavior (ability to meet standards of personal independence and social responsibility), both of which must have manifested before age 18. The defendant bears the burden of proving by a preponderance of the evidence that he or she is mentally retarded, and expert testimony is required to meet this burden.

Mental illness does not automatically disqualify a defendant from imposition of a death sentence. However, a defendant's mental disease or defect is specifically listed as an issue that may be considered by the jury as a mitigating factor if the mental disease or defect substantially impaired the defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law.

Summary of Bill:

The death penalty statute is amended to prohibit imposition of the death penalty for a person who had a severe mental disorder at the time the crime was committed. "Severe mental disorder" is defined as "a severe mental illness or defect that significantly impairs a person's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law." "Severe mental disorder" does not include a mental illness or defect manifested primarily by repeated criminal conduct or attributable solely to the effects of the voluntary use of alcohol or drugs.

A defendant may bring a pretrial motion for disqualification from death penalty eligibility as a result of mental retardation or severe mental disorder. As with mental retardation under current

law, the defendant bears the burden of proving by a preponderance of the evidence that he or she had a severe mental disorder, and expert testimony is required to meet this burden. If the court denies the motion, the jury may consider the issue in the special sentencing procedure.

If the defendant filed a pretrial motion for disqualification from death penalty eligibility based on either mental retardation or severe mental disorder, the jury must deliberate during the special sentencing procedure on the following question: "Has the defendant proved by a preponderance of the evidence that, at the time of the crime, the defendant was mentally retarded or suffered from a severe mental disorder?" If the jury unanimously answers this question in the affirmative, the defendant must be sentenced to life imprisonment without the possibility of release.

The list of mitigating factors that the court may consider in determining whether a defendant merits leniency is amended to include whether the defendant had significant intellectual impairments that do not constitute mental retardation at the time of the murder. In addition, the current mitigating factor relating to a defendant's mental disease or defect is amended to remove the requirement that the impairment resulting from the mental disease or defect be "substantial."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.